

12.0 PROPRIETARY RIGHTS - OWNERSHIP OF SYSTEM.

- A. The State of Iowa shall retain all ownership right to the systems developed or installed under this Contract. Contractor shall transfer to the State of Iowa all ownership rights in the complete system, including any and all performance enhancing software and operational plans, whether developed or obtained by the Contractor in the course of performance under the Contract or before it. This obligation is not subject to limitation in any respect, whether by characterization of any part of the system as proprietary or by failure to claim for the cost thereof.
- B. The State of Iowa reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to do so, all software, instructions, files, and documentation comprising the systems developed or installed under this Contract at any time during the period of the Contract and thereafter.

The license shall include, but not be limited to:

1. All EPSDT services and support programs;
2. All other system instructions for operating systems developed or installed under this Contract;
3. All data files;
4. User and operational manuals and other documentation;
5. System and program documentation describing systems developed or installed under this Contract;
6. Training programs for Department staff, the Department's agents, its designated representative, or external stakeholders in the operation and maintenance of the system;
7. Any and all performance-enhancing operational plans and products; and
All specialized or specially modified operating system software and specially developed programs, including utility, software, and documentation that are required for or used in the operation of systems developed or installed under this Contract but that may not be considered as being developed or modified under this Contract.

- C. The Contractor will convey to the Department copies of system documentation, operating instructions and procedures, and all data processing programs or portions thereof, to the extent that such programs are requested by the Department and are developed by the employees of the Contractor or any subcontractor as part of the Contract.
- D. The provisions of this article will be incorporated in any subcontract that relates to the development or operation of the systems developed or installed under this Contract

13.0 SUSPENSION AND DEBARMENT. The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

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14.0 LOBBYING RESTRICTIONS. The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

15.0 TOBACCO SMOKE.

- A. Public Law 103227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.
- B. Contractor certifies that it and its subcontractors will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

16.0 CONTRACT ADMINISTRATION.

- A. **Independent Contractor.** The status of the Contractor, and all subcontractors, shall be that of an independent contractor. The Department shall not provide the Contractor with office space, support staff, equipment or tools, or supervision beyond the terms of this Contract. Neither the Contractor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits insurance coverage or paid leave. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department shall not withhold taxes on behalf of the Contractor (unless required by law). The Contractor shall be responsible for payment of all taxes, fees and charges when due.
- B. **Compliance with Equal Employment and Affirmative Action Provisions.** The Contractor shall comply with all provisions of federal, state and local laws, rules and executive orders which apply to insure that no client, employee or applicant for employment is discriminated against because of race, religion, color, age, sex, national origin, or disability. The Contractor, if requested, shall provide state or federal agencies with appropriate reports as required to insure compliance with equal opportunity laws and regulations. The Contractor shall insure that its employees, agents and subcontractors comply with the provisions of this clause.
- C. **Compliance with Laws and Regulations.** The Contractor, its employees, agents and subcontractors, shall comply with all applicable state and federal laws, rules, ordinances, regulations and orders. The Contractor, its employees, agents and

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subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Contract.

- D. **Authorization.** Each party to this Contract represents and warrants to the other that:
1. It has the right, power and authority to enter into and perform its obligations under this Contract.
 2. It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- E. **Successors in Interest.** All terms, provisions, and conditions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.
- F. **Cumulative Rights.** The various rights, powers, options, elections and remedies of either party provided in this Contract, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, or shall in any way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.
- G. **Severability.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.
- H. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of this Contract.
- I. **Choice of Law and Forum.** The terms and provisions of this Contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this Contract shall be brought in an appropriate Iowa forum.
- J. **Use of Third Parties.** The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. All subcontracts shall be subject to prior approval by the Department. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.
- K. **Third Party Beneficiaries.** There are no third party beneficiaries to the Contract. This Contract is intended only to benefit the Department and the Contractor.
- L. **Not a Joint Venture.** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind of agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless

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otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of such activities and obligations.

- M. **Assignment and Delegation.** This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For purposes of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
- N. **Solicitation.** The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.
- O. **Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract shall be fully executed by both parties.
- P. **Additional Provisions.** The parties agree that if an Addendum, Attachment or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.
- Q. **Confidentiality.** Information of the Department that identifies clients and services is confidential. The Contractor and its employees, agents and subcontractors shall be allowed access to such information only as needed for performance of their duties related to this Contract. Contractor shall not use confidential information for any purpose other than carrying out Contractor's obligations under this Contract. The Contractor shall establish and enforce policies and procedures for safeguarding the confidentiality of such data. The Contractor may be held civilly or criminally liable for improper disclosure. Contractor shall promptly notify the Department of any request for disclosure of confidential information received by the Contractor.

DHS and CHSC shall comply with all applicable federal and state laws and regulations regarding the confidentiality of all client records, and the information contained therein. DHS and CHSC also agrees to obtain written consent from the client, provider and/or other authorized representative, for the release of information to any individual or entity not associated with the administration of the program.

- R. **Records Retention and Access.** The Contractor shall maintain books, records, and documents which sufficiently and properly document and explain all charges billed to the Department throughout the term of this Contract for a period of at least five years following the date of final payment or completion of any required audit begun during the aforementioned five (5) years, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents,

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papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices, payments, services provided or any other documentation or materials pertaining to this Contract, wherever such records may be located.

- S. **Express Warranties.** The Contractor expressly warrants, within the standards of care used within the industry, all aspects of the goods and services provided or used by it in the performance of this Contract.
- T. **Replacement of Contractor's Staff.** The Contractor will remove and replace personnel it assigns to perform services under this Contract if the Department has a reasonable objection based on performance and/or interpersonal relationship issues and is not requesting the removal for arbitrary reasons. In lieu of removing an individual about whom the Department has an objection, the Contractor may reassign the individual to another role in performing the Contract, subject to the approval of the Department, which it will not withhold unreasonably.
- U. **Headings or Captions.** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- V. **Integration.** This Contract represents the entire Contract between the parties and neither party is relying on any representation that may have been made which is not included in this Contract.
- W. **Supersedes Former Contracts or Agreements.** This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for services and products provided in connection with this Contract.
- X. **United States Department of Health and Human Services (HHS) Contingency.** This Contract is subject to approval, review, and modification of the HHS.
- Y. **Counterparts.** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- Z. **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- AA. **Obligations Beyond Contract Term.** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

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AB. Notices. Notices under this Contract shall be in writing to the individual at the address as it appears. The effective date for any notice under this Contract shall be the date of mailing which may be effected by certified U.S. Mail, return receipt requested, with postage prepaid thereon, or by recognized overnight delivery service such as Federal Express or UPS:

If to Agency:

Department of Human Services

Attn.: Sally Nadolsky

Bureau of Health Care Purchasing and Quality
Management

If to Contractor:

Child Health Specialty Clinic

Attn.: Brian Wilkes

Health and Disease Management

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17.0 EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

CHILD HEALTH SPECIALTY CLINICS

By: Jeffrey G. Lobas, M.D.

Date: Aug. 28, 2000

Name: Jeffrey G. Lobas, M.D.

Title: Director

By: R. Edward Howell

Date: 9/1/00

Name: R. Edward Howell

Title: Director and chief executive Officer

UNIVERSITY OF IOWA HEALTH CARE

Federal Tax Identification Number: 42-6004813

State of Iowa, The Department of Human Services

By: Jessie K. Rasmussen

Date: 9-10-00

Name: Jessie K. Rasmussen

Title: Director

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